2012 IL App. (1st) 103314

FIRST DIVISION
March 30, 2012

No. 1-10-3314

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

JOHN P. WALLISER, Plaintiff-Appellant, v. THE DEPARTMENT OF EMPLOYMENT SECURITY, THE DIRECTOR OF EMPLOYMENT SECURITY and THE BOARD OF REVIEW OF THE DEPARTMENT OF EMPLOYMENT SECURITY, Defendants-Appellees, (DiCola Enterprises, Inc. Defendant).	)	Appeal from the Circuit Court of Cook County. No. 10 L 50738 Honorable Elmer James Tolmaire, III, Judge Presiding.

JUSTICE HALL delivered the judgment of the court.

Justices McBride and Karnezis concurred in the judgment.

O R D E R

¶ 1 ***Held*** **:** The denial of unemployment benefits was affirmed: the Board's decision that the claimant had voluntarily left his employment was not clearly erroneous, the claimant was not denied due process, and the claimant failed to establish that the employer retaliated against him by misrepresenting the facts at the administrative hearing.

¶ 2 *Pro se* plaintiff John Walliser appeals from an order of the Circuit Court of Cook County affirming a decision by the Board of Review (the Board) denying plaintiff Walliser unemployment benefits. On appeal, plaintiff Walliser contends that: (1) he left his employment for good cause attributable to his employer; (2) he was denied due process of law in the hearing before the referee, and by the circuit court's failure to comply with section 3-111 (c) of the Code of Civil Procedure (735 ILCS 5/3-111(c) (West 2010) (the Code)); and (3) his employer violated section 2800 of the Unemployment Insurance Act (820 ILCS 405/2800 (West 2008) (the Act)). We conclude that the Board's decision denying unemployment benefits was correct and affirm the order of the circuit court.

¶ 3 BACKGROUND

¶ 4 Plaintiff Walliser began working for DiCola Enterprises, Inc. (DiCola) in November 2004. The last day he worked was August 14, 2009. The Illinois Department of Employment Security's (IDES) adjudicator denied plaintiff Walliser's application for unemployment benefits. After his request for reconsideration of the decision was denied, he requested an administrative hearing. An IDES referee conducted a telephonic hearing at which the following evidence was presented.

¶ 5 Plaintiff Walliser testified that he was a union carpenter and had worked in construction all his life, which included doing electrical and concrete work. He performed construction work

for DiCola, including electrical work, installing drywall and laying floor tile. When there was no construction work, he filled in by driving a truck for DiCola. Plaintiff Walliser worked an average of 50 hours per week. From February to May 2009, he averaged 25 hours per week, and by June 2009, he was working 10 hours per week. During the periods when his hours were reduced, he took on other jobs to pay his bills. Frequently, plaintiff Walliser received his work assignments from Robert DiCola the night before he was to begin a job. He requested that Mr. DiCola schedule the work so he could coordinate it with his other jobs.

¶ 6 Plaintiff Walliser testified that in August 2009, he asked Mr. DiCola to schedule more work for him. When no work was scheduled for him, he accepted a part-time job driving a taxi cab and took on some paralegal work. Plaintiff Walliser denied that he was ever called back to work in August or September 2009.

¶ 7 Questioned by Mr. DiCola, plaintiff Walliser acknowledged that on Sunday, August 16, 2009, he received an e-mail from Mr. DiCola stating that he was scheduled for work the next day, Monday, August 17, 2009. He explained that the previous week, he had informed Mr. DiCola that he did not know if there would be any work for him on the 17th because DiCola did not have the necessary materials to do the job. According to plaintiff Walliser, Mr. DiCola and he had discussed that plaintiff Walliser was not being compensated for picking up materials on his own time, and that he could not afford to pay for the materials himself. Nonetheless, in the August 16th e-mail, Mr. DiCola told him to pick up the materials on the way to the job.

¶ 8 Robert DiCola testified that plaintiff Walliser performed general labor and maintenance work for DiCola. He maintained that plaintiff Walliser was compensated when he picked up

materials on his own time. On August 17, 2009, when plaintiff Walliser did not show up to work, Mr. DiCola sent him an e-mail asking where he was. Plaintiff Walliser responded that his plans had changed. Mr. DiCola responded that plaintiff Walliser's answer was unacceptable and that he should call him before coming back to work. The following day, plaintiff Walliser informed him that he had taken a job driving a taxi cab so that he could pay his bills. Mr. DiCola understood from plaintiff Walliser's response that he had resigned his position with DiCola.

¶ 9 Mr. DiCola testified further that it was his responsibility to make sure that materials were at the job site so that the work could be done. But whether there was material or not, there was work for plaintiff Walliser to do at the August 17, 2009, job site. The work on that date was not predicated on plaintiff Walliser picking up the materials.

¶ 10 Plaintiff Walliser then testified that he was aware he was supposed to report for work at 3 p.m. on August 17, 2009. He had planned to take his roommate to work at noon and then report to the job site. But he did not want to go to the job site only to be sent home because the materials were missing, as had happened on previous occasions. Mr. DiCola denied that he had ever sent plaintiff Walliser home from a job site for that reason. The referee denied plaintiff Walliser's request to question Mr. DiCola further.

¶ 11 The IDES referee upheld the decision of the IDES adjudicator. He found from the evidence that there was work available to plaintiff Walliser, but he did not come to work. Based upon a preponderance of the evidence, plaintiff Walliser had left work without good cause attributable to DiCola, and was disqualified for unemployment benefits.

¶ 12 In his letter of appeal to the Board, plaintiff Walliser maintained that the referee failed to

take notice of his testimony that he was not able to perform the available work because he was not a licensed electrician, and there was no building permit for the job. He further maintained that the available work involved driving a truck and that the referee ignored his testimony that he was not a truck driver. He pointed out that he was not licensed to drive the truck, the truck lacked a safety sticker, and DiCola had failed to pay the proper fuel tax. He also maintained that the acts required of him by DiCola violated numerous state and local laws. Finally, plaintiff Walliser requested that he be permitted to present additional documentation to refute Mr. Dicola's false statements that were relied on by the referee.

¶ 13 The Board upheld the IDES referee's decision. The Board refused to consider plaintiff Walliser's request to present the additional documentation. The Board ruled that he had not provided a sufficient explanation showing that his inability to produce the documentation in the hearing before the referee was for reasons that were not his fault and were beyond his control as required by the applicable rules. Based on the evidence, the Board found that plaintiff Walliser left DiCola's employ due to his dissatisfaction with the reduction in the number of his hours, which did not constitute good cause for leaving employment.

¶ 14 Plaintiff Walliser filed a *pro se* complaint for administrative review in the circuit court. Pursuant to section 3-111(c) of the Code of Civil Procedure (735 ILCS 5/3-111(c) (West 2010) (the Code)), he filed a motion requesting that the court's judgment be made based on findings of facts and propositions of law. The court affirmed the decision of the Board finding that the decision was "neither against the manifest weight of the evidence nor contrary to law."

¶ 15 Plaintiff Walliser timely appeals.

¶ 16 ANALYSIS

¶ 17 I. Good Cause for Leaving Employment

¶ 18 Plaintiff Walliser contends that the Board erred when it determined that he did not establish good cause for leaving his employment with DiCola.

¶ 19 A. *Standard of Review*

¶ 20 The issue of whether an employee left work without good cause attributable to his employer involves a mixed question of law and fact to which we apply the "clearly erroneous" standard of review. *Childress v. The Department of Employment Security*, 405 Ill. App. 3d 939, 942 (2010). In an administrative proceeding, we review only the Board's decision. *Childress*, 405 Ill. App. 3d at 342. The Board's decision is clearly erroneous only where a review of the record leaves the reviewing court with a definite and firm conviction that a mistake has been made. *Childress*, 405 Ill. App. 3d at 942-43.

¶ 21 B. *Discussion*

¶ *22* In support of his contention that he established good cause for leaving DiCola, plaintiff Walliser maintains that he was hired to perform carpentry work for which he was trained, but that DiCola required him to perform work for which he was not qualified or trained, such as driving a truck and performing electrical work. He relies on *Jones v. Board of Review of the Department of Labor*, 136 Ill. App. 3d 64 (1985).

¶ 23 In *Jones*, the claimant was hired to perform carpentry work but over time was required to perform many tasks unrelated to carpentry work. He quit his employment, and his claim for unemployment benefits was denied by the Board. The circuit court reversed the denial.

¶ 24 In upholding the circuit court's decision, the appellate court determined that the claimant had been hired as a carpenter but, over his objection, his duties underwent a substantial change. When he was assigned work that required other skills and were beyond his capabilities, he had good reason to leave his employment. *Jones*, 136 Ill. App. 3d at 66-67.

¶ 25 The facts in the present case distinguish it from *Jones*. According to the testimony at the hearing before the IDES referee, plaintiff Walliser performed general labor and maintenance while employed at DiCola. There was no testimony that he was hired to do only carpentry work. Plaintiff Walliser himself testified that he had worked in construction all his life, which included doing electrical and concrete work. The testimony also established that plaintiff Walliser's work did not undergo a substantial change from the work he performed between when he was first hired in 2004, and August 2009. Finally, plaintiff Walliser never objected to being required to do electrical work or drive a truck for DiCola. His sole complaint was that he did not want to pick up materials on his own time, using his own vehicle, and pay for them with his own money. The evidence does not support plaintiff Walliser's claim that requiring him to drive a truck and doing electrical work was a substantial change from the work for which he was hired.

¶ 26 Next, plaintiff Walliser argues that DiCola made it impossible for him to remain working for it by decreasing his hours, which made it economically unfeasible for him to drive 70 miles each day for work, and by changing his schedule, which interfered with his responsibility to provide transportation for his roommate. Plaintiff Walliser points out that he requested that Mr. DiCola give him a schedule of work in advance so he could coordinate it with his other employment but that he continued to get job assignments without much notice.

¶ 27 Generally, neither dissatisfaction with the number of hours nor wages constitutes good cause to leave employment for purposes of entitlement to unemployment compensation. *Collier v. Department of Employment Security*, 157 Ill. App. 3d 988, 992 (1987). In *Collier*, the claimant worked full-time when she was hired. When her hours were temporarily reduced, she requested more hours but was told there was no way to tell when the cutback in hours would end. She quit her job a week later. In upholding the denial of benefits, the reviewing court held that the fact that she needed the money for her children's education did not constitute good cause to leave her employment, where her hours were reduced due to a business decline, but her duties remained the same, and she quit without obtaining new employment. *Collier*, 157 Ill. App. 3d at 994-95.

¶ 28 In *Acevedo v. Department of Security*, 324 Ill. App. 3d 768 (2001), the claimant had been working as a window washer for 6 months when his employer told him he had no work for him and reduced his hours from 40 to between 13 and 20 hours per week. The claimant applied for unemployment benefits on the basis he was laid off. The employer asserted that the claimant had left voluntarily, explaining that, due to the installation of a new computer system, work was not being scheduled as usual and that there had been work for the claimant on the days he was absent. The employer tried to contact the claimant but was told that he may have taken another job.

¶ 29 This court determined that the claimant had left his employment voluntarily. The court rejected the circuit court's conclusion the reduction in hours constituted a lay-off because the reduction impacted the claimant's ability to support his family. Citing *Collier*, the court

determined that the reduction did not result in a substantial change in the claimant's employment, and therefore, the impact on the claimant's finances was not attributable to the employer. The court further pointed out that the claimant could have continued to work for the employer while he filed a claim for partial benefits. *Acevedo*, 324 Ill. App. 3d at 773.

¶ 30 In the present case, plaintiff Walliser's hours were reduced due to a business slowdown at DiCola. Even though his hours were reduced, there was no change in his work responsibilities. Moreover, the evidence established that plaintiff Walliser did not object to the August 17th starting time because of his obligation to drive his roommate to work but because he did not want to report to the job site unless he was assured that the work material would be there. Mr. DiCola testified that it was his responsibility to see that the material was there and that there was work for plaintiff Walliser to do on August 17, 2009.

¶ 31 Plaintiff Walliser's reliance on *Pearson v. Board of Review of the Department of Employment Security*, 194 Ill. App. 3d 1064 (1990), is misplaced. In *Pearson*, the claimant's employment with Illinois Bell was terminated in accordance with union rules when she failed to pay her union dues. The claimant had signed an authorization to have her union dues deducted from her paycheck. When she transferred to a new job location, Illinois Bell failed to inform her that a new authorization was required. By time she learned that fact, she was three months behind in her dues. When she failed to bring her dues current, her employment was terminated. This court found that the board of review's focus should have been on Illinois Bell's conduct in connection with the claimant's failure to pay her dues and that the board ignored evidence of the claimant's financial difficulties. As a result, the court determined that the board's denial of

benefits was against the manifest weight of the evidence. *Pearson*, 194 Ill. App. 3d at 1069-70 (when determining good cause for leaving, the focus is on the employer's conduct, not that of the employee).

¶ 32 We find *Pearson* distinguishable from the present case. In that case, there was no question that the claimant's employment was terminated, and that the evidence established that the termination was directly attributable to the conduct of Illinois Bell rather than the claimant's failure to pay her union dues. In the present case, the evidence established that plaintiff Walliser left his employment at DiCola because he needed more hours, not because DiCola's conduct caused him to fail to fulfill a financial obligation that was a condition of his employment.

¶ 33 We conclude that plaintiff Walliser failed to establish good cause for leaving his employment at DiCola.

¶ 34 II. Denial of Due Process

¶ 35 Plaintiff Walliser contends that he was denied due process when the IDES referee denied his request to question Mr. DiCola and limited his consideration to the August 17, 2009, incident instead of Mr. DiCola's conduct which led up to that final incident. He further contends that he was denied due process by the circuit court's failure to make findings of fact and conclusions of law in rendering its order in this case.

¶ 36 A. *Standard of Review*

¶ 37 Whether a claimant was denied a full and fair opportunity to be heard in conformance with the fundamental requirements of due process is reviewed under the *de novo* standard. *Sudzus v. Department of Employment Security*, 393 Ill. App. 3d 814, 824 (2009).

¶ 38 B. *Discussion*

¶ *39* 1. Hearing Before the Referee

¶ *40* The regulations governing administrative proceedings give the IDES referee control over the hearing, but the exercise of that control must not infringe on due process rights. *Sudzus*, 393 Ill. App. 3d at 824. The referee must ensure that the parties have a full opportunity to present all evidence and testimony regarding the factual and legal issues on review in the hearing. *Sudzus*, 393 Ill. App. 3d at 825; see 56 Ill. Adm. Code §2720.245(a) (1997). A claim of a denial of due process will be sustained only upon a show of prejudice in the proceeding. *Sudzus*, 393 Ill. App. 3d at 25.

¶ 41 A review of the hearing fails to establish that plaintiff Walliser was denied due process. Prior to the commencement of the hearing, the referee explained the nature and the purpose of the proceedings to the parties. During the hearing, both parties were permitted to present testimony and evidence. Each party was allowed to question the other party with regard to the other party's testimony.

¶ 42 The referee has the discretion to control the proceedings in the best manner under the circumstances. *Sudzus*, 393 Ill. App. 3d at 825 (citing 56 Ill. Adm. Code §2720.245(a) (1997)). Toward the end of the proceeding, the referee denied Mr. DiCola's request to ask plaintiff Walliser a question, stating, "I think we're just getting repetitive here, gentlemen. We're rehashing all the same stuff." Both Mr. DiCola and plaintiff Walliser made further comments on the issue of whether plaintiff Walliser had ever been sent home from a job site for lack of material. When plaintiff Walliser requested that he be allowed to ask Mr. DiCola a question, the

referee denied the request, stating as follows:

¶ 43 "No, no, no, no, because, you know, we can go on and on and on for the rest of the afternoon, I'm sure, about all *** every little incident that has occurred. And I think I have enough information here to make a decision. Uh, I appreciate both of you trying to, you know, paint the whole picture of what really happens between the two of you, uh, but, you know, you could give me dates going back to last November or December, I'm sure, about what happened when we did this job and what happened when we had that job and what material was missing and I had to go get this. You know, I'm just concerned about basically the incident surrounding the final incident and the separation, okay? So I'm going to conclude the hearing."

¶ 44 The referee allowed the parties to clarify their positions as to plaintiff Walliser's failure to report for work on August 17, 2009. It was only after the parties began trading charges back and forth that the referee called for a conclusion to the hearing. The referee's comment did not indicate that he would not consider plaintiff Walliser's allegations that on previous occasions, Mr. DiCola had sent him home from a job site because material was lacking, but rather, the referee already had sufficient information on that point. Finally, we fail to see how plaintiff Walliser was prejudiced by the referee's determination to conclude the proceedings.

¶ 45 2. Violation of Section 3-111(c) of the Code

¶ 46 Plaintiff Walliser contends that the circuit court violated his right to due process by failing to comply with section 3-111(c) of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/3-111(c) (West 2000)), which holds that "[o]n motion of either party, the circuit court shall

make findings of fact or state the propositions of law upon which its judgment is based." Plaintiff Walliser requested the circuit court to enter its judgment based upon such findings of fact and propositions of law.

¶ 47 In its final order, the circuit court noted that it had read the record and briefs, and had heard oral argument on the complaint for administrative review. The court then determined that the Board's decision was neither against the manifest weight of the evidence nor contrary to law.

¶ 48 Plaintiff Walliser claims that in rendering its decision, the circuit court was obligated to distinguish controlling case law and each case he cited in his brief in support of a reversal of the Board's decision. We disagree.

¶ 49 Nothing in the text of section 3-111(c) or in the cases interpreting it leads us to conclude that in order to satisfy this section of the Code that a circuit court is required to discuss and analyze each case relied upon by the party bring the motion. Rather, our reviewing courts have determined that a circuit court's alleged failure to comply with section 3-111(c) of the Code does not constitute error where the court determines that the administrative decision was not against the manifest weight of the evidence and the court states the propositions of law upon which its judgment was based. *Collura v. Board of Police Comm'rs of the Village of Itasca*, 135 Ill. App. 3d 827, 845-46 (1985); *Hansell v. Department of Registration and Education*, 113 Ill. App. 3d 862, 865 (1983). Plaintiff Walliser has not established that he suffered prejudice from the circuit court's failure to specify the precise law or facts it relied on in rendering its decision. See *Collura*, 135 Ill. App. 3d at 845-46.

¶ 50 Moreover, there is no authority supporting plaintiff Walliser's claim that a circuit court's

alleged failure to comply with section 3-111(c) of the Code results in a violation of due process. Administrative hearings are governed by the fundamental principles and requirements of due process of law. *Abrahamson v. Illinois Department of Professional Regulation*, 153 Ill.2d 76, 92 (1992). Notice and an opportunity to be heard are necessary principles of procedural due process. *Segal v. Illinois Department of Insurance*, 404 Ill. App. 3d 998, 1002 (2010).

¶ 51 In this case, we find that plaintiff Walliser was afforded due process of law by reason of the notice he received, the opportunity to be heard and the standards the circuit court followed in making the determination that the Board's decision was neither against the manifest weight of the evidence nor contrary to law.

¶ 52 III. Violation of Section 2800 of the Unemployment Insurance Act

¶ 53 Plaintiff Walliser contends that DiCola violated section 2800 of the Act. Section 2800(A)(1)(a) provides that it is unlawful for any person or employing entity to

> "[m]ake a false statement or representation or fail to disclose a material fact;
>
> a. To obtain, or increase, or prevent, or reduce any benefit or payment under the provisions of this Act ***." 820 ILCS 405/2800(A)(1)(a) (West 2008).

¶ 54 Plaintiff Walliser maintains that in the hearing before the referee, Mr. DiCola misrepresented material facts. Plaintiff Walliser maintains that the misrepresentations were in retaliation for plaintiff Walliser's conduct in: (1) complaining that he was not receiving overtime pay; (2) attempting to file a workers' compensation claim; (3) complaining of DiCola's unlawful conduct; and (4) complaining about not being compensated for picking up materials for DiCola.

¶ 55 Plaintiff Walliser asserts that Mr. DiCola misrepresented to the referee that plaintiff

Walliser quit his employment. However, the record reflects only that from Mr. DiCola's, standpoint, plaintiff Walliser had left his employment with DiCola by accepting the job driving the taxi cab. Plaintiff Walliser relies on the October 7, 2009, e-mail from Mr. DiCola asking if plaintiff Walliser had changed his ways. However, that e-mail was contained in the additional documentation that the Board declined to consider. Plaintiff Walliser did not challenge the Board's ruling in this appeal. Therefore, the record does not support plaintiff Walliser's claim that DiCola violated section 2800 of the Act by Mr. DiCola's testimony at the hearing before the referee.

¶ 56 CONCLUSION

¶ 57 The Board's determination that plaintiff Walliser left his employment with DiCola voluntarily without good cause was not clearly erroneous. Therefore, we affirm the order of the circuit court.

¶ 58 Affirmed.